

Upper Clark Fork River Basin Steering Committee

Meeting Summary

January 10, 2006

Introductions

Gerald Mueller and members of the Upper Clark Fork River Basin Steering Committee (Steering Committee) introduced themselves. A list of the members in attendance is attached below as Appendix 1.

Agenda

- Review of the November 16, 2005 Meeting Summary
- Update on the DEQ-Philipsburg Sewage Treatment Plant Discussions
- Summary of Mr. Mueller's Meeting Regarding the Deer Lodge Land Application Project
- Post-Adjudication Issue Paper
- Adjudication Survey
- Upper Clark Fork Water Story Status
- NRCS EQIP Update

November 16, 2005 Meeting Summary

The Steering Committee made no changes to the meeting summary.

Update on the DEQ-Philipsburg Sewage Treatment Plant Discussions

Gerald Mueller reported that last week he had spoken to Dick Hoehne, manager of the Philipsburg sewage treatment plant, regarding the ongoing discussions between the City of Philipsburg and the Montana Department of Environmental Quality (DEQ) about the issues raised at the November 16 Steering Committee meeting. Mr. Hoehne stated that communication with DEQ had improved and that a meeting between the City and DEQ was to take place on January 9, 2006. Mr. Mueller stated that because this meeting was yesterday, he did not have a chance to visit with Mr. Hoehne about its outcome. Mr. Mueller stated that he would report on it to the Steering Committee.

Deer Lodge Land Application Project

Mr. Mueller reported on his meeting with Ben Bobowski, Chief of Natural Resources for Grant-Kohrs Ranch National Historic Site (NHS), concerning the status of the Deer Lodge sewage treatment plant sewage effluent land application project using his December 19, 2005 memo. See Appendix 2 below.

Mr. Bobowski volunteered to attend a future Steering Committee meeting to discuss this project and other concerns related to water management.

Mike McLane stated that a former Trout Unlimited employee, John Wilson, will be joining the National Parks Foundation. Mr. Wilson intends to seek additional funding for National Park infrastructure, one of the concerns raised by Mr. Bobowski related to the land application project. Mr. McLane suggested, and the Steering Committee agreed, that Mr. Wilson be invited to attend Mr. Bobowski's appearance at a Steering Committee meeting.

Post-Adjudication Issue Paper

Mr. Mueller said asked the Steering Committee to consider formally adopting and distributing the paper which now marked "Preliminary Draft - Not for Quotation." After a discussion, the Steering Committee opted to defer its decision for two reasons. First, DNRC officials indicated that the Department is not yet ready to support its adoption, and, second, again a number of Steering Committee members were unable to attend today's meeting. Mike McLane stated that the Department reluctance may be related to not focusing on the paper until very recently, and that deferring adoption of it a month may be beneficial.

During the discussion, Steering Committee members raised specific issues with the adjudication that is delaying its progress. If these issues could be dealt with in a separate forum such as District Court or the Supreme Court, the adjudication might proceed more rapidly. These issues include:

- Appeals of water master decisions - Instead of waiting long periods such as six months to a year to consider appeals to their rulings, the water masters should set a specific time period, e.g. 10 days, for objecting to their rulings and then a specific period for hearing them, another 10 days, after which unresolved issues could be separated from the adjudication, and heard in another forum.
- Status of storage - The Water Court has deferred ruling on whether storage constitutes a beneficial right for which a water right can be obtained.
- Pre-July 1, 1973 water marshaling - The Water Court is apparently approving marshaling of water prior to July 1, 1973. Marshaling means combining and/or moving the diversion or place of use of water rights without seeking a change in a water right. If marshaling increases the duty of water, it may not be consistent with state law.

Adjudication Survey

Using the documents included below in Appendix 3, Mr. Mueller reported on the status of the survey project and asked for comments on a draft survey instrument.

Steering Committee members made the following suggestions:

- Add the question early in the survey, "How long have you or your family owned your water right?" The answer should be a indication of one of a range of years such as pre-1900, 1900-1930, 1930-1950, 1950-1973.
- In question 3 which asks for the priority dates of water rights, the answer should also be specified in ranges such as pre-1900, 1900-1930, 1930-1950, 1950-1973.
- References to "the adjudication" should be replaced with "the new state-wide adjudication."
- Add the question, "Should surface and ground water rights be administered and enforced together in Montana?"
- Add the question, "Do you need additional information about the adjudication process?"
- Question 16 should be modified to read, "Do you have any other comments about the adjudication process, how water rights are presently administered, or any other topics?"
- To ensure confidentiality, the request to put the respondents name on the return envelop should be dropped. Rather than telephone calls, follow-up to increase survey participation should be done via a post card mailed to the entire list.

Upper Clark Fork Water Story Status

Mr. Mueller reviewed an outline of the report modified as a result of a meeting with Dennis Workman. The outline is contained below in Appendix 4. Steering Committee members stated a concern that the report not be written as if fishery values were all that is important. They suggested a review of two documents for other economic considerations: *Clark Fork Basin Watershed Management Plan* published in September 2004 by the Clark Fork River Basin Task Force and the State of the Clark Fork published in 2005 by the Clark Fork Coalition.

NRCS EQIP Update

Nancy Sweeney with the NRCS in Deer Lodge briefed the Steering Committee on recent developments related to EQIP applications for irrigation projects. She passed out copies of a number of documents including: an August, 2005 document (MT-ENG-253) which includes the Steering Committee's proposed check off to determine the likelihood that project would require a water rights change; form CCC-1200 and its Montana addenda (MT-LTP-4) which set out agreements that an EQIP participant must make regarding irrigation projects; a document entitled "Irrigation Return Flows" which states in part: "Regulatory water-related issues (Abandonment, Water Rights, Change of Use, Change of Point of Diversion, Salvage Water Rights Issues, etc.) must be resolved before proceeding with this planning process...;" a document entitled, "Producer Self Certification of Irrigation History" which documents recent irrigation activity and is subject to civil and/or criminal penalties; and Montana Bulletin NO. MT190-5-3 which states policy and instructions when an EQIP applicant is planning to convert from flood irrigation to sprinkler irrigation and the conversion may cause "...negative quantity and quality environmental impacts of irrigation return flows on dewatered streams."

The purpose of the self certification document is to ensure that irrigation has occurred in three of the last five years, thereby ensuring the availability of water to the project.

The requirement that an applicant must resolve water rights related issues before proceeding with EQIP application may significantly delay (one year or greater) implementation of EQIP projects because of the period required in some DNRC regional offices to complete water right changes. Construction of the project must begin within one year of the EQIP grant award.

Public Comment

There was no public comment.

Next Meeting

The next meeting was scheduled for Tuesday, February 7, 2006. The agenda will include:

- A report by DEQ on the Total Maximum Daily Load Program;
- Final approval of the adjudication survey;
- Adoption of the post-adjudication paper; and
- Report on the status of upper Clark Fork water story.

Appendix 1

Steering Committee Member, Staff and Public Attendance List January 10, 2006

Members	Group/Organization Represented
Eugene Manley	Montana Water Resources/Granite County
Bob Benson	Clark Fork Coalition
Jim Dinsmore	Granite Conservation District
Dan Ueland	Mile High Conservation District
Jules Waber	Powell County
Vladimir Babich	Atlantic Richfield
Staff	
Mike McLane	DNRC
Gerald Mueller	Facilitator
Public	
Nancy Sweeney	NRCS-Deer Lodge

Appendix 2
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: December 19, 2005
To: Steering Committee Members
From: Gerald Mueller
RE: Task Force

In developing the *Upper Clark Fork River Basin Water Management Plan* which was released in December 1994, the Steering Committee helped to stimulate planning for land application of the effluent of the Deer Lodge sewage treatment plant to reduce nutrient discharge into the Clark Fork River during summer months. Subsequently, the Steering Committee assisted with obtaining a declaratory ruling from the Montana Department of Natural Resources and Conservation that no one has a right to sewage treatment plant effluent, thereby clearing the way for land application projects. With funding from the Montana Department of Health and Environmental Sciences and the cooperation and support of the Grant-Kohrs Ranch National Historic Site (NHS), a unit of the National Parks Service (NPS), the City of Deer Lodge began land application of its sewage treatment plant effluent on 118 acres of the National Historic Site land in 2000.

This morning I met with Ben Bobowski, Chief of Natural Resources for Grant-Kohrs Ranch NHS, to review the status of the land application project. This year a five-year agreement between the City and the Park Service expired and a new agreement was finalized for land application through 2008. This agreement was negotiated with the active assistance of Will McDowell on behalf of the Tri-State Water Quality Council (TWQC) and with a grant provided by the TWQC.

What initially was viewed as a win-win project by both the City and Park Service, has become problematic for both because of financial concerns. The Park Service has and is experiencing budget reductions leading to a reduction in personnel at the Grant Kohrs Ranch Site. Also, NPS facilities must pay Davis Bacon wages and overtime (or compensatory time) for work in excess of eight hours per day. The City has problems paying the increased rates for electricity needed for pumping the effluent. Also, leaks into the sewage lagoons continue. Because of the leaks, the capacity of the land application project is not sufficient for the City to eliminate direct discharge of effluent to the river. A recent engineering study determined that the old pipes in the City sewage system is a significant source of the leaks. The City, with participation of the NPS and the TWQC, is working on a long-term solution to the sewage effluent nutrient discharge to the Clark Fork. The optimum solution appears to be rebuilding the old sewage lagoon to provide the capacity to store sewage effluent so that it can be discharged beginning in September when the additional nutrient does not adversely affect the river.

Two other water rights related issues that the Steering Committee might consider are funding for monitoring devices in the area of the Grant-Kohrs Ranch and new subdivision well activity occurring south of Deer Lodge.

Appendix 3
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: January 7, 2006
To: Steering Committee Members
From: Gerald Mueller
RE: Adjudication Survey

A student in the University of Montana Environmental Studies Program is willing to work on the survey under the direction of Dr. Vicki Watson for class credit. Jim Dinsmore and I met yesterday with the student, Jeana Baker from Salmon Idaho, to discuss this project. We discussed the following idea:

The survey should be conducted in two sub-basins of the upper Clark Fork, one that has a temporary or preliminary decree from the Water Court and one that does not. Combined, no more than 500 individuals should be surveyed. The survey should be conducted in writing with a follow-up call after it is mailed. Also after the survey is mailed, the Steering Committee should conduct a public meeting in each basin to explain it and give people an opportunity to ask questions and to complete the survey at the meeting. We discussed the following time line:

- January 10 Steering Committee meeting - Select the two sub-basins and discuss the survey questions (Steering Committee).
- By February 10, finalize the survey mailing material (Steering Committee).
- By March 10, finalize the mailing data base (Mueller & McLane).
- March 10 - 15, mail out survey (Mueller, Baker, & DNRC?).
- Week of March 20 conduct the public meetings (Mueller).
- Week of March 27 conduct follow-up phone calls (Baker).
- By June 1 compile and report on survey results (Baker)

Adjudication Survey

January 6, 2006

Background

The enclosed survey is being conducted by the Upper Clark Fork River Basin Steering Committee which is a basin water management group established pursuant to state law. The Steering Committee is not an agency of state government and has no regulatory authority. Members of the Steering Committee are appointed by the basin's six county commissions and six conservation districts and the Director of the Department of Natural Resources and Conservation. Members include representatives of basin farmers and ranchers, environmental/recreation organizations, industries, hydropower utilities, and state agencies. A list of current Steering Committee members is on the back of this sheet.

In December 1994, the Steering Committee adopted and presented to Montana's governor and legislature the *Upper Clark Fork River Basin Water Management Plan*. The purpose of the Steering Committee is to implement this plan and amend it as necessary consistent with its statutory authority (see §85-2-338 MCA). The Steering Committee intends all of its actions to take into full account the law of prior appropriation.

In 1979, the Montana Legislature passed a statute requiring the adjudication of all pre-1973 water rights. Prior to this date, the State had no written record of most water rights. The adjudication began in 1982 with individuals filing their water rights claims. By 2005, no final water right decrees have been issued by the Montana Water Court which was established to conduct the adjudication. The 2005 Legislature required water rights holders to pay a fee, which for most holders is \$10 per year per water right per year, to fund completion of the adjudication process by 2020.

Because of its commitments to the first-in-time, first-in-right water rights system, the Steering Committee has a long-standing interest in the adjudication process. In March 2004, the Steering Committee issued a policy paper entitled "White Paper on the Montana Water Rights Adjudication." The paper concluded:

Without a complete and accurate state-wide water rights adjudication, the status of Montanan's water rights is uncertain. This uncertainty threatens the livelihoods of farmers and ranchers, the viability of water dependent industries, the value and marketability of real property, and the health of fisheries and aquatic ecosystems.

The paper also found that the most critical problem with the adjudication is the slow pace at which it is producing accurate and enforceable decrees. Given the then current funding and staffing resources for the Montana Water Court and the DNRC, the adjudication would not likely have been finalized for another 25 to 50 years. While the Steering Committee did support the 2005 Legislature's action to provide more resources to hasten completion of the adjudication, it took no position on the means of raising the additional funding.

In January 2006, the Steering Committee issued a second paper entitled "How Will Completion of the Adjudication Affect Water Management in Montana?" The paper found that completion of the adjudication may result in fundamental changes to water rights enforcement, water administration and water management. The Steering Committee is interested in ensuring that water users, water managers, and policy makers consider these changes and their implications so that appropriate responses to them can be identified, discussed and put in place before the final water rights decrees are issued.

This survey is being conducted in an attempt to hear from water rights holders about their experience with the adjudication process and their expectations after this process is completed.

Copies of the two Steering Committee papers are available at www.xxx.org and at your local conservation district office. Questions about this survey can be addressed to Steering Committee facilitator, Gerald Mueller, at 543-0026.

Survey Questions

Note that your response to this survey will be kept confidential. Only a summary of the results of all surveys will be reported and retained. Individual responses will be destroyed after the summary is completed. Please fill out this survey and return it in the envelope provided.

Name: _____ (Optional)

Q: Do you hold a pre-1973 water right from the State of Montana?

Q: For each pre-1973 water right, what is its priority date and purpose of use?

Q: Have you or your representative participated in the statewide adjudication of water rights? If so, how have you participated?

Q: What is the estimated cost of your participation cost in time and dollars?

Q: What is the status of your pre-1973 water right, i.e., is it included in a temporary or preliminary water rights decree issued by the Montana Water Court?

Q: On a scale of 1 to 10 with 1 meaning very dissatisfied and 10 meaning extremely satisfied, how would you rank the adjudication process?

Q: Do you expect that completion of the adjudication will make your use of water easier or harder or have no affect?

Q: How will completion of the adjudication affect your use of water?

Q: Is your water right regularly administered by a water commissioner?

Q: The cost of a water commissioner is now borne proportionately by those water rights holders who receive water pursuant to the commissioner's actions. Would you support requiring all water rights holders in the decree that the commissioner is enforcing to help pay for the commissioner?

Q: Do you expect that enforcing your water right(s) will be easier or harder after the adjudication process is completed? Why or why not?

Q: Should the DNRC be more active in enforcing water rights?

Q: About how much time and money have you spent defending your water rights?

Q: Do you feel that your water right is threatened by interests in Montana? By interests in downstream states?

Q: Do you have any other comments or concerns about the adjudication process or how water rights are currently administered?

Q: Would you like to receive a summary of the results of this survey? If so, please list your name and mailing address.

Appendix 4
Upper Clark Fork River Basin Steering Committee
C/O Gerald Mueller
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Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: December 29, 2005
To: File
From: Gerald Mueller
RE: Meeting with Dennis Workman Regarding the Upper Clark Fork River Flow Story

Dennis and I reviewed the story outline, and he offered the following ideas:

Introduction

- Considerable existing focus on cleaning up the upper River.
- Purpose of this report - tell the story of the river from a flow, fishery, and water user perspective.

Vision

- Review Ken Knudsen's report of the early 80's comparing the upper Clark Fork River with the Madison and other Montana rivers. Call Glen Philips to get a copy of the report.
- River should support 1,000 -1,500 trout/per mile based on Dennis' professional judgment of rivers of similar size and productivity. Trout would be brown trout plus some increase in rainbow numbers assuming a successful metals remediation.
- Continued source of water for agriculture use.
- Dewatering will prevent realizing this vision.

Current Instream Flow Status

- Existing hydrograph - see January 2004 management plan for current hydrograph.
- Frequency & amount of dewatering - see Workman 2002 report for frequency, amount and location of dewatering.
- Places where flows are limiting factors
- Pictures - contact Mike Roberts and Dennis.
- Map

Existing Water Rights, Use and Infrastructure

- Description of existing use - agriculture, industrial and recreation (immediately below the bonds is a brown trout fishery).
- List of rights/claims to identify existing demand/agriculture need - see previous Workman reports.
- Map of diversions - contact Mike McLane.
- Needs - measure diversions, e.g. Whalen, Johnson, Windy Mountain/Circle K, & Kohrs Manning ditches.
- Flow measuring points - USGS gauges at Warm Springs Creek, Galen, Deer Lodge (check

with Mel White of USGS to see who pays O&M); aqua rods at Racetrack Bridge & Sager Lane.

Fishery

- Mainstem function - adult habitat; little spawning activity currently due to metals.
- Status - get fish per mile & redd count data from Pat Saffel.
- Needs - wetted perimeter data for Sager Lane and connectivity inventory of all tributaries with the mainstem.

Opportunities to Improve Stream Flows

- ARCO rights to Silver Lake storage - contact Stan Bradshaw (Laurie Zeller) & Matt Williams (Robin Bullock).
- Ditch losses - Mike Roberts report.
- Drought plan & local watershed committee.

What Is Necessary to Realize the Opportunities

- Land owner cooperation - temporary or long-term leases, drought plan.
- Water commissioner to protect existing water rights and instream flow.
- Funding to secure & protect instream flows - NRD, Future Fisheries, TU, Montana Water Trust, other.